

ESTTA Tracking number: **ESTTA666547**

Filing date: **04/14/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219888
Party	Defendant Senuvo LLC
Correspondence Address	STEPHEN H BEAN LEGENDS LAW GROUP PLLC 93 SOUTH MAIN, SUITE 3 KAYSVILLE, UT 84037 UNITED STATES steve@legendslaw.com
Submission	Opposition/Response to Motion
Filer's Name	Steve Bean
Filer's e-mail	steve@legendslaw.com
Signature	/Steve Bean/
Date	04/14/2015
Attachments	150414 A's Opposition And Cross Motion.pdf(625212 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of:
Application Serial No. 86127647
for SENUVO

4Life Trademarks, LLC	)	Opposition No. 91219888
Opposer)	
v.	)	APPLICANT’S OPPOSITION TO
	)	OPPOSER’S MOTION TO DISMISS
	)	APPLICANT’S COUNTERCLAIM,
Senuvo, LLC	)	AND CROSS-MOTION TO AMEND ITS
Applicant	)	ANSWER AND COUNTERCLAIM

Applicant, Senuvo, LLC (“Senuvo”), herein opposes the motion of Opposer, 4Life Trademarks, LLC (“4Life”) to dismiss Senuvo’s Counterclaim and, pursuant to Fed. R. Civ. P. 15(a), cross-moves to amend its Answer and the Counterclaim asserted in its Answer.

Sufficiency of Original Counterclaim

Under Section 18, 15 U.S.C. § 1068, the Director may restrict with respect to the register the registration of a registered mark. Opposer’s current registration is overly broad with respect to its actual use of the mark in commerce and should, accordingly, be partially cancelled. Although Opposer’s registration cites the broad expanse of “dietary and nutritional supplements; vitamin, mineral and herbal supplements,” its actual use of the mark is much less than this. Applicant’s original counterclaim appropriately requested that the registration be partially cancelled to identify the actual goods upon which the 4LIFE TRANSFER FACTOR RENUVO mark is being used. Opposer’s goods are specifically targeted for supporting healthy aging and daily stress management, they are marketed through direct marketing channels to different consumers from Applicant’s customers, and they function in completely different ways from Applicant’s goods. The proposed language of the original counterclaim was sufficient to withstand a motion to dismiss for failure to state a claim upon which relief may be granted.

“In order to withstand a motion to dismiss for failure to state a claim, a plaintiff need only allege such facts as would, if proved, establish that (1) the plaintiff has standing to maintain the proceedings, and (2) a valid ground exists for opposing [or canceling] the mark.” *Fair Indigo LLC v. Style Conscience*, 85 USPQ2d 1536, 1538 (TTAB 2007). “The pleading must be examined in its entirety, construing the allegations therein liberally, as required by Fed. R. Civ. P. 8(f), to determine whether it contains any allegations which, if proved, would entitle plaintiff to the relief sought.” *Id.*; see *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982); see also *Kelly Services Inc. v. Greene’s Temporaries Inc.*, 25 USPQ2d 1460 (TTAB 1992). When determining whether to dismiss a claim for failure to state a claim upon which relief can be granted, “all of plaintiff’s well-pleaded allegations must be accepted as true, and the complaint must be construed in the light most favorable to plaintiff.” See *Advanced Cardiovascular Systems Inc. v. SciMed Life Systems Inc.*, 988 F.2d 1157, 26 USPQ2d 1038 (Fed. Cir. 1993). As originally pled, Senuvo’s counterclaim is sufficient to withstand a motion to dismiss.

Grounds for Amended Answer And Counterclaim

Notwithstanding the sufficiency of Applicant’s initial Answer and Counterclaim, Applicant submits herewith (in redline format as Exhibit A and in clean format as Exhibit B) an Amended Answer and Counterclaim. The purpose of this amended pleading is to further clarify the distinctions between the parties’ cited goods and the absolute lack of consumer confusion that would exist through an appropriate amendment to the description of goods by both parties.

Fed. R. Civ. P. 15(a)(2) provides that the Board “should freely give leave [to amend a party’s pleading] when justice so requires.” This is a broad standard that comports with the justice necessary for an *inter partes* proceeding such as a trademark opposition. The Board has recognized that “amendments to pleadings should be allowed with great liberality at any stage of the proceeding where necessary to bring about a furtherance of justice unless it is shown that entry of the amendment would violate settled law or be prejudicial to the rights of any opposing

parties.” *American Optical Corp. v. American Olean Tile Co., Inc.*, 168 USPQ 471, 473 (TTAB 1971). The Board also must consider whether there is any undue prejudice to the non-moving party and whether the amendment is legally sufficient. *See, e.g., Cool-Ray, Inc. v. Eye Care, Inc.*, 183 USPQ 618, 621 (TTAB 1974).

The Amended Answer And Counterclaim is necessary for Applicant to properly defend itself in this proceeding. The amended pleading offers a revised counterclaim and a new defense that support the absence of a finding of a likelihood of confusion based on the parties’ unique distribution channels, which do not overlap. Both parties sell their goods via network marketing. Opposer declares in its complaint that it sells its products through a “direct selling” business platform. Complaint, ¶ 3. Opposer further asserts that both its and Applicant’s products are sold through a “direct sales or MLM platform, with a business model that uses commissions and bonuses for distributors.” *Id.* at ¶ 36. Although these channels are both called “direct marketing” or “network marketing” the similarity is in name and method only. The reality of this unique marketing channel is that it precludes consumer confusion.

In direct marketing, the consumer is presented with only the company’s authorized goods through only the company’s direct, authorized representative or the company’s direct website. There is no chance for consumer confusion. Opposer’s manual of policies and procedures for its distributors states:

Distributors may not display 4Life products or services with any other non4Life products or services. If operating from a physical retail location, **4Life products or services must be displayed separately from non-4Life products or services.** Distributors may not offer the 4Life opportunity, products or services to prospective or existing customers or distributors in conjunction with any non4Life program, opportunity, product or service. **Distributors may not offer any non-4Life opportunity, products or services at any 4Life-related meeting, seminar or convention.**

Exhibit C, Excerpted pages from 4Life Policy And Procedure Manual at ¶ 3.17 (2014) (emphasis added). Applicant has a similar policy for protecting its own brands. Applicant’s policies and procedures manual states:

[Distributors] are encouraged not to display or sell SENUVO products, services, or literature in any retail or service establishment.

....

[Distributors] may not offer the SENUVO opportunity, products or services to prospective or existing Customers or [Distributors] in conjunction with any non-SENUVO approved program, opportunity, product or service. [Distributors] may not offer any non-SENUVO approved opportunity, product or services at any SENUVO-related meeting, seminar, convention, or immediately following such event.

Exhibit D, Excerpted pages from Senuvo Policy And Procedure Manual at ¶¶ 3.7 and 3.9 (2015) (emphasis added).

Applicant's amended pleading offers a revised counterclaim and a defense that each rely on the absence of a finding of a likelihood of confusion because of the parties' unique and non-overlapping direct marketing channels. The entry of this proposed restriction to Opposer's registration not only conforms with Opposer's actual use of the mark in commerce but will also avoid a finding of a likelihood of confusion. *See Eurostar Inc. v. "Euro-Star" Reitmoden GmbH & Co.*, 34 USPQ2d 1266 (TTAB 1994). There is no possibility of consumer confusion when the parties' respective products are sold through network marketing channels. This unique channel of direct selling and direct distribution simply does not allow for confusion as to source.

Opposer attempts to argue in its motion to dismiss that *any* attempt by Applicant to amend its counterclaim is futile and somehow not allowed because the first counterclaim was allegedly asserted in bad faith. But not everything is done in "bad faith" simply because it is against one party's position or because it is part of the initial proceedings in a matter. The case law cited by Opposer for Applicant's alleged "bad faith" is inapposite here. Furthermore, the case law supports Applicant's amended counterclaim and its request to restrict Opposer's registration to the channels of trade actually used by Opposer. The legislative history quoted in *Eurostar*, as well as the Eurostar opinion itself, make it quite clear that Section 18 permits the restriction of a party's registration in a cancellation proceeding or, as in this case, a counterclaim for partial cancellation, to limit the channels of trade. Finally, given that Applicant is making its

motion to amend early in the proceedings, even before discovery has opened, there is no prejudice to Opposer.

WHEREFORE, for the foregoing reasons, Applicant, Senuvo, respectfully requests that 4Life's motion to dismiss Applicant's Counterclaim be denied, and that Senuvo's cross-motion to amend its answer and the counterclaim asserted therein be granted.

Respectfully submitted,

Dated: April 14, 2015

LEGENDS LAW GROUP, PLLC

By: 

Stephen H. Bean, Esq.
Attorney for Applicant

LEGENDS LAW GROUP, PLLC
93 South Main, Suite 3
Kaysville, UT 84037
Telephone: (801) 264-4949
Facsimile: (801) 618-4149

CERTIFICATE OF SERVICE

I hereby certify that on Tuesday, April 14, 2015, I caused a true and correct copy of Applicant's **APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO DISMISS APPLICANT'S COUNTERCLAIM, AND CROSS-MOTION TO AMEND ITS ANSWER AND COUNTERCLAIM** to be delivered by email, as agreed between the parties, as follows:

Glenn Spencer Bacal
Bacal Law Group, P.C.
6991 E. Camelback Rd., Ste D-102
Scottsdale, AZ 85251
Glenn.Bacal@bacalgroup.com

with a copy to :
Jamie Tuccio
Jamie.Tuccio@bacalgroup.com

A handwritten signature in black ink that reads "Steve Bean". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Stephen H. Bean, Esq.

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of:
Application Serial No. 86127647
for SENUVO

4Life Trademarks, LLC	)	Opposition No. 91219888
Opposer)	
)	
v.	)	FIRST AMENDED ANSWER AND
	)	COUNTERCLAIM
Senuvo, LLC)	
Applicant)	

Applicant Senuvo, LLC (hereinafter “Applicant”), a Utah limited liability company, for its **First Amended** Answer to the Notice of Opposition filed by Opposer 4Life Trademarks, LLC (hereinafter “Opposer”) against application for registration of Applicant’s trademark SENUVO, Serial No. 86127647 filed November 23, 2013, and published in the Official Gazette of June 24, 2014, pleads and avers as follows:

FIRST DEFENSE

In response to the allegations set forth in the specific numbered paragraphs of the Notice of Opposition, Applicant states as follows:

1. Answering paragraph 1 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

2. Answering paragraph 2 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

3. Answering paragraph 3 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and

accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

4. Answering paragraph 4 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

5. Answering paragraph 5 of the Notice of Opposition, Applicant admits that it is an Alaska limited liability company formed on November 21, 2013 and denies the remaining allegations in the paragraph.

6. Answering paragraph 6 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

7. Answering paragraph 7 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

8. Answering paragraph 8 of the Notice of Opposition, Applicant admits that it offers and sells dietary and nutritional supplements, admits that it sells weight management products, admits that it sells some products through network marketing channels, and denies the remaining allegations in the paragraph.

9. Answering paragraph 9 of the Notice of Opposition, Applicant denies each and every allegation contained therein. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

10. Answering paragraph 10 of the Notice of Opposition, Applicant admits that the first two photographs shown in this paragraph depict a use by Applicant of its SENUVO trademark. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same. Applicant further denies any

implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

11. Answering paragraph 11 of the Notice of Opposition, Applicant denies each and every allegation contained therein. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

12. Answering paragraph 12 of the Notice of Opposition, Applicant admits that the words "senuvo" and "renuvo" differ by one letter and denies the remaining allegations in the paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

13. Answering paragraph 13 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

14. Answering paragraph 14 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

15. Answering paragraph 15 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

16. Answering paragraph 16 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and

accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

17. Answering paragraph 17 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

18. Answering paragraph 18 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

19. Answering paragraph 19 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

20. Answering paragraph 20 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

21. Answering paragraph 21 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph

that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

22. Answering paragraph 22 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

23. Answering paragraph 23 of the Notice of Opposition, Applicant admits that the goods and services in Opposer's trademark registration for 4LIFE TRANSFER FACTOR RENUVO states "dietary and nutritional supplements; vitamin, mineral and herbal supplements" in International Class 005. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same.

24. Answering paragraph 24 of the Notice of Opposition, Applicant admits that Opposer filed its application for the 4LIFE TRANSFER FACTOR RENUVO registration on May 1, 2013. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same.

25. Answering paragraph 25 of the Notice of Opposition, Applicant admits that Opposer filed a federal trademark application for RENUVO in International Class 005 on July 24, 2014 for "nutritional supplement protein capsules, tablets, powders, shakes and bars intended to support muscle building, fat burning and exercise recovery; dietary supplement protein bar; nutritional supplements in the form of protein shakes and bars; powdered protein supplement drink mix and concentrate; protein supplement shakes; protein supplement shakes for supporting weight loss; protein supplement shakes for supporting muscle building; dietary supplements in the form of powders; powder preparations for providing additional protein and protein concentrate; dietary supplements in the form of capsules and tablets containing protein."

26. Answering paragraph 26 of the Notice of Opposition, Applicant admits that Opposer's application to register RENUVO alone was filed on an intent-to-use basis. Applicant

does not have sufficient knowledge or information to form a belief as to the remaining allegations contained in this paragraph and accordingly denies the same.

27. Answering paragraph 27 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

28. Answering paragraph 28 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

29. Answering paragraph 29 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

30. Answering paragraph 30 of the Notice of Opposition, Applicant admits the allegations of this paragraph.

31. Answering paragraph 31 of the Notice of Opposition, Applicant admits that the words "senuvo" and "renuvo" differ by one letter. Applicant denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

32. Answering paragraph 32 of the Notice of Opposition, Applicant admits the allegations of this paragraph.

33. Answering paragraph 33 of the Notice of Opposition, Applicant admits that it uses SENUVO as both a standard character mark and in stylized form. Applicant admits that the first example shows one of Applicant's uses of the mark SENUVO relating to a dietary supplement.

Applicant denies that the remaining two examples in this paragraph show use of the mark SENUVO.

34. Answering paragraph 34 of the Notice of Opposition, Applicant admits the allegations of this paragraph.

35. Answering paragraph 35 of the Notice of Opposition, Applicant admits the allegations of this paragraph.

36. Answering paragraph 36 of the Notice of Opposition, Applicant admits that it markets and sells its products using a direct sales or MLM platform, with commissions and bonuses for distributors. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same.

37. Answering paragraph 37 of the Notice of Opposition, Applicant admits that it markets its SENUVO products using social media such as Pinterest, Facebook, and Twitter. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same.

38. Answering paragraph 38 of the Notice of Opposition, Applicant admits that it claims its products support a healthy immune system. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same.

39. Answering paragraph 39 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

40. Answering paragraph 40 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

41. Answering paragraph 41 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

42. Answering paragraph 42 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

43. Answering paragraph 43 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

44. Answering paragraph 44 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

45. Answering paragraph 45 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

46. Answering paragraph 46 of the Notice of Opposition, Applicant admits that Opposer filed its application for the 4LIFE TRANSFER FACTOR RENUVO registration on May 1, 2013. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same.

47. Answering paragraph 47 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

48. Answering paragraph 48 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

49. Answering paragraph 49 of the Notice of Opposition, Applicant denies the allegations of this paragraph.

50. Answering paragraph 50 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

51. Answering paragraph 51 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

52. Answering paragraph 52 of the Notice of Opposition, Applicant admits that it intends to use the mark SENUVO for the goods listed in its application under International Class 5 and that Opposer has a registration for 4LIFE TRANSFER FACTOR RENUVO for certain goods listed under International Class 5. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

53. Answering paragraph 53 of the Notice of Opposition, Applicant admits that it intends to use the mark SENUVO for the goods listed in its application under International Class 5 and that Opposer has a registration for 4LIFE TRANSFER FACTOR RENUVO for certain goods listed under International Class 5. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same.

54. Answering paragraph 54 of the Notice of Opposition, Applicant admits that it filed for trademark rights to SENUVO in International Classes 3, 30, and 32. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

55. Answering paragraph 55 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

56. Answering paragraph 56 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

57. Answering paragraph 57 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

58. Answering paragraph 58 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and

accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

59. Answering paragraph 59 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

60. Answering paragraph 60 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

61. Answering paragraph 61 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

62. Answering paragraph 62 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

63. Answering paragraph 63 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

64. Answering paragraph 64 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that

Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

65. Answering paragraph 65 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

66. Answering paragraph 66 of the Notice of Opposition, Applicant denies the allegations of this paragraph.

67. Answering paragraph 67 of the Notice of Opposition, Applicant denies the allegations of this paragraph.

68. Answering paragraph 68 of the Notice of Opposition, Applicant denies the allegations of this paragraph.

69. Answering paragraph 69 of the Notice of Opposition, Applicant denies the allegations of this paragraph.

SECOND DEFENSE

70. There is no likelihood of confusion between Applicant's mark SENUVO and Opposer's registered mark 4LIFE TRANSFER FACTOR RENUVO because the goods for which the registered mark is used are noncompetitive with and unrelated to Applicant's intended goods. Opposer's registration for 4LIFE TRANSFER FACTOR RENUVO subsists only in International Class 5 for "dietary and nutritional supplements; vitamin, mineral and herbal supplements." Applicant, on the other hand, has applied for trademark rights to SENUVO in four different international trademark classifications: 3, 5, 30, and 32. Although Applicant's goods in International Class 5 include certain dietary supplement beverages, those goods are not competitive with Opposer's goods. Likewise, Applicant's intended goods in international classifications 3, 30, and 32 are also not competitive with any of Opposer's goods registered in

Class 5. There is no likelihood of confusion between Applicant's intended use of the mark SENUVO in Classes 3, 5, 30, and 32 and Opposer's use of the mark 4LIFE TRANSFER FACTOR RENUVO.

THIRD DEFENSE

71. There is no likelihood of confusion between Applicant's mark SENUVO and Opposer's registered mark 4LIFE TRANSFER FACTOR RENUVO because the Opposer cannot expand its limited use of the 4LIFE TRANSFER FACTOR RENUVO mark in Class 5 to now include the categories of goods, whether competitive or non-competitive, in Classes 3, 5, 30, and 32 that were claimed by Applicant in its November 23, 2013 trademark filing. Any trademark rights that Opposer may have are narrowly circumscribed and would not lead to a likelihood of confusion.

FOURTH DEFENSE

72. There is no likelihood of confusion between Applicant's mark SENUVO and Opposer's mark 4LIFE TRANSFER FACTOR RENUVO because the marks are not confusingly similar. The different sight, sound, and meaning of the two separate marks precludes any finding of a likelihood of consumer confusion.

FIFTH DEFENSE

73. There is no likelihood of confusion between Applicant's mark SENUVO and Opposer's mark 4LIFE TRANSFER FACTOR RENUVO because the parties market and distribute their respective goods through different direct marketing channels with no possibility of overlap. In direct marketing, products are sold directly to the consumer from an authorized distributor or from the company. There is simply no possibility that a consumer of 4Life products would be confused as to the source of Senuvo's products if the 4Life products are sold through different direct marketing channels.

SIXTH DEFENSE

74. Opposer is barred from opposing Applicant's trademark application for the mark SENUVO by reason of its own unclean hands.

SEVENTH DEFENSE

75. An appropriate amendment to Applicant's application would eliminate any likelihood of market confusion as to the goods represented by the parties' marks. Applicant's application for the mark SENUVO currently contains the following description of goods and services in International Class 5: "Dietary beverage supplements for human consumption in liquid and dry mix form for therapeutic purposes; Dietary supplement beverage for promoting general health and for nutritional purposes; Dietary supplemental drinks in the nature of vitamin and mineral beverages; Nutritionally fortified beverages; Soy protein for use as a nutritional supplement in various powdered and ready-to-drink beverages; Vitamin fortified beverages." The above-listed goods on which Applicant uses the SENUVO mark are marketed and distributed by Applicant through direct marketing channels commonly found in the network marketing or multi-level marketing industry. Thus, even if the Trademark Trial and Appeal Board ultimately finds that Opposer is entitled to judgment with respect to Applicant's current identification of goods, Applicant should be able to register its mark with the additional limiting descriptor "marketed via network marketing," as there is simply no likelihood of confusion for such goods sold through direct marketing channels.

FIRST AMENDED COUNTERCLAIM

76. Applicant believes that it will be damaged by Opposer's United States Trademark Registration No. 4489645 issued February 2, 2014 for the trademark 4LIFE TRANSFER FACTOR RENUVO in International Class 5 for "dietary and nutritional supplements; vitamin,

mineral and herbal supplements,” and hereby counterclaims and petitions the Trademark Trial And Appeal Board to cancel the registration in part.

77. The grounds for partial cancellation of the mark 4LIFE TRANSFER FACTOR RENUVO is that the mark has only been used in commerce with respect to dietary supplements ~~targeted for supporting healthy aging and daily stress management sold through network marketing channels~~. Accordingly, the 4LIFE TRANSFER FACTOR RENUVO registration is invalid as being too broad for its actual usage and should be modified to more accurately portray the goods as dietary supplements “~~targeted for supporting healthy aging and daily stress management marketed via network marketing~~.” Limiting Opposer’s ~~the~~ registration in this manner to more accurately portray the ~~channels through which the goods are actually sold~~ would eliminate any alleged likelihood of confusion between the ~~goods sold under the parties’~~ respective marks.

WHEREFORE, Applicant requests that the Notice of Opposition be dismissed.

Respectfully submitted,

Dated: April 14, 2015

LEGENDS LAW GROUP, PLLC

By: Steve Bean

Stephen H. Bean, Esq.
Attorney for Applicant

LEGENDS LAW GROUP, PLLC
93 South Main, Suite 3
Kaysville, UT 84037
Telephone: (801) 264-4949
Facsimile: (801) 618-4149

CERTIFICATE OF SERVICE

I hereby certify that on Tuesday, April 14, 2015, I caused a true and correct copy of Applicant's **FIRST AMENDED ANSWER AND COUNTERCLAIM** to be delivered by email, as agreed between the parties, as follows:

Glenn Spencer Bacal
Bacal Law Group, P.C.
6991 E. Camelback Rd., Ste D-102
Scottsdale, AZ 85251
Glenn.Bacal@bacalgroup.com

with a copy to :
Jamie Tuccio
Jamie.Tuccio@bacalgroup.com

A handwritten signature in black ink, reading "Steve Bean", is written over a horizontal line.

Stephen H. Bean, Esq.

EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of:
Application Serial No. 86127647
for SENUVO

4Life Trademarks, LLC	)	Opposition No. 91219888
Opposer)	
)	
v.	)	FIRST AMENDED ANSWER AND
	)	COUNTERCLAIM
Senuvo, LLC)	
Applicant)	

Applicant Senuvo, LLC (hereinafter “Applicant”), a Utah limited liability company, for its First Amended Answer to the Notice of Opposition filed by Opposer 4Life Trademarks, LLC (hereinafter “Opposer”) against application for registration of Applicant’s trademark SENUVO, Serial No. 86127647 filed November 23, 2013, and published in the Official Gazette of June 24, 2014, pleads and avers as follows:

FIRST DEFENSE

In response to the allegations set forth in the specific numbered paragraphs of the Notice of Opposition, Applicant states as follows:

1. Answering paragraph 1 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

2. Answering paragraph 2 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

3. Answering paragraph 3 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and

accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

4. Answering paragraph 4 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

5. Answering paragraph 5 of the Notice of Opposition, Applicant admits that it is an Alaska limited liability company formed on November 21, 2013 and denies the remaining allegations in the paragraph.

6. Answering paragraph 6 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

7. Answering paragraph 7 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

8. Answering paragraph 8 of the Notice of Opposition, Applicant admits that it offers and sells dietary and nutritional supplements, admits that it sells weight management products, admits that it sells some products through network marketing channels, and denies the remaining allegations in the paragraph.

9. Answering paragraph 9 of the Notice of Opposition, Applicant denies each and every allegation contained therein. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

10. Answering paragraph 10 of the Notice of Opposition, Applicant admits that the first two photographs shown in this paragraph depict a use by Applicant of its SENUVO trademark. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same. Applicant further denies any

implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

11. Answering paragraph 11 of the Notice of Opposition, Applicant denies each and every allegation contained therein. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

12. Answering paragraph 12 of the Notice of Opposition, Applicant admits that the words "senuvo" and "renuvo" differ by one letter and denies the remaining allegations in the paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

13. Answering paragraph 13 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

14. Answering paragraph 14 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

15. Answering paragraph 15 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

16. Answering paragraph 16 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and

accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

17. Answering paragraph 17 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

18. Answering paragraph 18 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

19. Answering paragraph 19 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

20. Answering paragraph 20 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

21. Answering paragraph 21 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph

that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

22. Answering paragraph 22 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

23. Answering paragraph 23 of the Notice of Opposition, Applicant admits that the goods and services in Opposer's trademark registration for 4LIFE TRANSFER FACTOR RENUVO states "dietary and nutritional supplements; vitamin, mineral and herbal supplements" in International Class 005. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same.

24. Answering paragraph 24 of the Notice of Opposition, Applicant admits that Opposer filed its application for the 4LIFE TRANSFER FACTOR RENUVO registration on May 1, 2013. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same.

25. Answering paragraph 25 of the Notice of Opposition, Applicant admits that Opposer filed a federal trademark application for RENUVO in International Class 005 on July 24, 2014 for "nutritional supplement protein capsules, tablets, powders, shakes and bars intended to support muscle building, fat burning and exercise recovery; dietary supplement protein bar; nutritional supplements in the form of protein shakes and bars; powdered protein supplement drink mix and concentrate; protein supplement shakes; protein supplement shakes for supporting weight loss; protein supplement shakes for supporting muscle building; dietary supplements in the form of powders; powder preparations for providing additional protein and protein concentrate; dietary supplements in the form of capsules and tablets containing protein."

26. Answering paragraph 26 of the Notice of Opposition, Applicant admits that Opposer's application to register RENUVO alone was filed on an intent-to-use basis. Applicant

does not have sufficient knowledge or information to form a belief as to the remaining allegations contained in this paragraph and accordingly denies the same.

27. Answering paragraph 27 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

28. Answering paragraph 28 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

29. Answering paragraph 29 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

30. Answering paragraph 30 of the Notice of Opposition, Applicant admits the allegations of this paragraph.

31. Answering paragraph 31 of the Notice of Opposition, Applicant admits that the words "senuvo" and "renuvo" differ by one letter. Applicant denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

32. Answering paragraph 32 of the Notice of Opposition, Applicant admits the allegations of this paragraph.

33. Answering paragraph 33 of the Notice of Opposition, Applicant admits that it uses SENUVO as both a standard character mark and in stylized form. Applicant admits that the first example shows one of Applicant's uses of the mark SENUVO relating to a dietary supplement.

Applicant denies that the remaining two examples in this paragraph show use of the mark SENUVO.

34. Answering paragraph 34 of the Notice of Opposition, Applicant admits the allegations of this paragraph.

35. Answering paragraph 35 of the Notice of Opposition, Applicant admits the allegations of this paragraph.

36. Answering paragraph 36 of the Notice of Opposition, Applicant admits that it markets and sells its products using a direct sales or MLM platform, with commissions and bonuses for distributors. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same.

37. Answering paragraph 37 of the Notice of Opposition, Applicant admits that it markets its SENUVO products using social media such as Pinterest, Facebook, and Twitter. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same.

38. Answering paragraph 38 of the Notice of Opposition, Applicant admits that it claims its products support a healthy immune system. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same.

39. Answering paragraph 39 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

40. Answering paragraph 40 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

41. Answering paragraph 41 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

42. Answering paragraph 42 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

43. Answering paragraph 43 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

44. Answering paragraph 44 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

45. Answering paragraph 45 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

46. Answering paragraph 46 of the Notice of Opposition, Applicant admits that Opposer filed its application for the 4LIFE TRANSFER FACTOR RENUVO registration on May 1, 2013. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same.

47. Answering paragraph 47 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

48. Answering paragraph 48 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

49. Answering paragraph 49 of the Notice of Opposition, Applicant denies the allegations of this paragraph.

50. Answering paragraph 50 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

51. Answering paragraph 51 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

52. Answering paragraph 52 of the Notice of Opposition, Applicant admits that it intends to use the mark SENUVO for the goods listed in its application under International Class 5 and that Opposer has a registration for 4LIFE TRANSFER FACTOR RENUVO for certain goods listed under International Class 5. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

53. Answering paragraph 53 of the Notice of Opposition, Applicant admits that it intends to use the mark SENUVO for the goods listed in its application under International Class 5 and that Opposer has a registration for 4LIFE TRANSFER FACTOR RENUVO for certain goods listed under International Class 5. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same.

54. Answering paragraph 54 of the Notice of Opposition, Applicant admits that it filed for trademark rights to SENUVO in International Classes 3, 30, and 32. Applicant does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies the same. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

55. Answering paragraph 55 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

56. Answering paragraph 56 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

57. Answering paragraph 57 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

58. Answering paragraph 58 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and

accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

59. Answering paragraph 59 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

60. Answering paragraph 60 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

61. Answering paragraph 61 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

62. Answering paragraph 62 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

63. Answering paragraph 63 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

64. Answering paragraph 64 of the Notice of Opposition, Applicant denies the allegations of this paragraph. Applicant further denies any implication in this paragraph that

Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

65. Answering paragraph 65 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant further denies any implication in this paragraph that Opposer's alleged rights in the mark 4LIFE TRANSFER FACTOR RENUVO extend to the single word "renuvo."

66. Answering paragraph 66 of the Notice of Opposition, Applicant denies the allegations of this paragraph.

67. Answering paragraph 67 of the Notice of Opposition, Applicant denies the allegations of this paragraph.

68. Answering paragraph 68 of the Notice of Opposition, Applicant denies the allegations of this paragraph.

69. Answering paragraph 69 of the Notice of Opposition, Applicant denies the allegations of this paragraph.

SECOND DEFENSE

70. There is no likelihood of confusion between Applicant's mark SENUVO and Opposer's registered mark 4LIFE TRANSFER FACTOR RENUVO because the goods for which the registered mark is used are noncompetitive with and unrelated to Applicant's intended goods. Opposer's registration for 4LIFE TRANSFER FACTOR RENUVO subsists only in International Class 5 for "dietary and nutritional supplements; vitamin, mineral and herbal supplements." Applicant, on the other hand, has applied for trademark rights to SENUVO in four different international trademark classifications: 3, 5, 30, and 32. Although Applicant's goods in International Class 5 include certain dietary supplement beverages, those goods are not competitive with Opposer's goods. Likewise, Applicant's intended goods in international classifications 3, 30, and 32 are also not competitive with any of Opposer's goods registered in

Class 5. There is no likelihood of confusion between Applicant's intended use of the mark SENUVO in Classes 3, 5, 30, and 32 and Opposer's use of the mark 4LIFE TRANSFER FACTOR RENUVO.

THIRD DEFENSE

71. There is no likelihood of confusion between Applicant's mark SENUVO and Opposer's registered mark 4LIFE TRANSFER FACTOR RENUVO because the Opposer cannot expand its limited use of the 4LIFE TRANSFER FACTOR RENUVO mark in Class 5 to now include the categories of goods, whether competitive or non-competitive, in Classes 3, 5, 30, and 32 that were claimed by Applicant in its November 23, 2013 trademark filing. Any trademark rights that Opposer may have are narrowly circumscribed and would not lead to a likelihood of confusion.

FOURTH DEFENSE

72. There is no likelihood of confusion between Applicant's mark SENUVO and Opposer's mark 4LIFE TRANSFER FACTOR RENUVO because the marks are not confusingly similar. The different sight, sound, and meaning of the two separate marks precludes any finding of a likelihood of consumer confusion.

FIFTH DEFENSE

73. There is no likelihood of confusion between Applicant's mark SENUVO and Opposer's mark 4LIFE TRANSFER FACTOR RENUVO because the parties market and distribute their respective goods through different direct marketing channels with no possibility of overlap. In direct marketing, products are sold directly to the consumer from an authorized distributor or from the company. There is simply no possibility that a consumer of 4Life products would be confused as to the source of Senuvo's products if the 4Life products are sold through different direct marketing channels.

SIXTH DEFENSE

74. Opposer is barred from opposing Applicant's trademark application for the mark SENUVO by reason of its own unclean hands.

SEVENTH DEFENSE

75. An appropriate amendment to Applicant's application would eliminate any likelihood of market confusion as to the goods represented by the parties' marks. Applicant's application for the mark SENUVO currently contains the following description of goods and services in International Class 5: "Dietary beverage supplements for human consumption in liquid and dry mix form for therapeutic purposes; Dietary supplement beverage for promoting general health and for nutritional purposes; Dietary supplemental drinks in the nature of vitamin and mineral beverages; Nutritionally fortified beverages; Soy protein for use as a nutritional supplement in various powdered and ready-to-drink beverages; Vitamin fortified beverages." The above-listed goods on which Applicant uses the SENUVO mark are marketed and distributed by Applicant through direct marketing channels commonly found in the network marketing or multi-level marketing industry. Thus, even if the Trademark Trial and Appeal Board ultimately finds that Opposer is entitled to judgment with respect to Applicant's current identification of goods, Applicant should be able to register its mark with the additional limiting descriptor "marketed via network marketing," as there is simply no likelihood of confusion for such goods sold through direct marketing channels.

FIRST AMENDED COUNTERCLAIM

76. Applicant believes that it will be damaged by Opposer's United States Trademark Registration No. 4489645 issued February 2, 2014 for the trademark 4LIFE TRANSFER FACTOR RENUVO in International Class 5 for "dietary and nutritional supplements; vitamin,

mineral and herbal supplements,” and hereby counterclaims and petitions the Trademark Trial And Appeal Board to cancel the registration in part.

77. The grounds for partial cancellation of the mark 4LIFE TRANSFER FACTOR RENUVO is that the mark has only been used in commerce with respect to dietary supplements sold through network marketing channels. Accordingly, the 4LIFE TRANSFER FACTOR RENUVO registration is invalid as being too broad for its actual usage and should be modified to more accurately portray the goods as dietary supplements “marketed via network marketing.” Limiting Opposer’s registration in this manner to more accurately portray the channels through which the goods are actually sold would eliminate any alleged likelihood of confusion between the goods sold under the parties’ respective marks.

WHEREFORE, Applicant requests that the Notice of Opposition be dismissed.

Respectfully submitted,

Dated: April 14, 2015

LEGENDS LAW GROUP, PLLC

By: Steve Bean

Stephen H. Bean, Esq.
Attorney for Applicant

LEGENDS LAW GROUP, PLLC
93 South Main, Suite 3
Kaysville, UT 84037
Telephone: (801) 264-4949
Facsimile: (801) 618-4149

CERTIFICATE OF SERVICE

I hereby certify that on Tuesday, April 14, 2015, I caused a true and correct copy of Applicant's **FIRST AMENDED ANSWER AND COUNTERCLAIM** to be delivered by email, as agreed between the parties, as follows:

Glenn Spencer Bacal
Bacal Law Group, P.C.
6991 E. Camelback Rd., Ste D-102
Scottsdale, AZ 85251
Glenn.Bacal@bacalgroup.com

with a copy to :
Jamie Tuccio
Jamie.Tuccio@bacalgroup.com

A handwritten signature in black ink, reading "Steve Bean", is written over a horizontal line.

Stephen H. Bean, Esq.

EXHIBIT C

4Life[®]
Policies &
Procedures

(Effective April 1, 2014)

Normas y
Procedimientos
de 4Life[®]

(en efecto a partir del 1 de abril
de 2014)



TOGETHER, BUILDING PEOPLE®

While distributors may believe it beneficial to provide copies of checks, or to disclose the earnings of themselves or others, such approaches have legal consequences that can negatively impact 4Life as well as the distributor making the claim unless appropriate disclosures required by law are also made contemporaneously with the income claim or earnings representation. Because 4Life distributors may not have the data necessary to comply with the legal requirements for making income claims, a distributor, when presenting or discussing the 4Life opportunity or Marketing and Compensation Plan to a prospective distributor, may not make income projections, income claims or disclose his or her 4Life income (including the showing of checks, copies of checks or bank statements).

3.15. Commercial Outlets. 4Life strongly encourages the retailing and selling of its products and services through person to person contact. However, the Company recognizes that some distributors may find that selling products from small retail outlets may be beneficial. Therefore, distributors may sell 4Life products in small, individually owned retail outlets. 4Life products may not be sold in department stores, chain or franchised retail outlets, mass merchandising outlets, or any retail location with two thousand (2,000) square feet or more of retail space. Distributors must obtain written authorization from 4Life prior to selling any 4Life products in a retail outlet, and 4Life retains the discretion to restrict its products from being sold in any retail location which it does not deem acceptable.

3.16. Trade Shows, Expositions and Other Sales Forums. Distributors may display and/or sell 4Life products at trade shows and professional expositions. Distributors may not display and/or sell 4Life products at swap meets, garage sales, flea markets, farmer's markets or Internet auction sites without the prior written consent of the Company.

3.17. Conflicts of Interest / Non-solicitation. 4Life distributors are free to participate in other multilevel or

extensivos como los que otras personas han alcanzado. En 4Life, creemos firmemente que el potencial de ingresos con 4Life es lo suficientemente alto como para ser muy atractivo sin dar a conocer las ganancias de los demás.

A pesar de que los distribuidores creen que es beneficioso proporcionar copias de los cheques o revelar las ganancias propias o de otras personas, tales enfoques tienen consecuencias legales que pueden tener un impacto negativo tanto para 4Life como para el distribuidor que hace la declaración, a menos que se hagan las revelaciones apropiadas que exige la ley al mismo tiempo que se haga la declaración sobre los ingresos o la representación de las ganancias. Debido a que los distribuidores de 4Life a lo mejor no cuentan con la información necesaria para cumplir con los requisitos legales para hacer declaraciones sobre los ingresos, un distribuidor, cuando presente o hable sobre la oportunidad que ofrece 4Life o el Plan de Mercadeo y Compensación con un posible distribuidor, no puede hacer proyecciones sobre los ingresos, declaraciones de ingresos ni revelar sus propios ingresos con 4Life (incluyendo mostrar los cheques, copias de cheques o el estado de cuenta bancaria).

3.15. Locales Comerciales. 4Life recomienda firmemente que las ventas de menudeo de sus productos y servicios se hagan de persona a persona. Sin embargo, la Compañía admite que algunos distribuidores podrían ver beneficioso el vender productos desde tiendas pequeñas. Por lo tanto, los distribuidores podrán vender los productos de 4Life en tiendas pequeñas cuyo propietario sea un individuo. Los productos de 4Life no se podrán vender en tiendas de departamentos, cadenas o franquicias, tiendas de distribución masiva ni locales de venta al público que cuenten con más de 2000 pies cuadrados de espacio. Los distribuidores deben obtener autorización escrita de 4Life antes de vender productos de 4Life en una tienda de menudeo, y 4Life se reserva la discreción para restringir la venta de sus productos en cualquier tienda de menudeo que no parezca aceptable.

3.16. Demonstraciones Comerciales, Exposiciones y Otros Foros de Ventas. Los distribuidores podrán exponer y/o vender los productos de 4Life durante los shows comerciales y exposiciones profesionales. Los distribuidores no pueden exponer ni vender los productos de 4Life en las ferias de intercambios, ventas de garaje, mercados o en sitios de subastas por Internet sin previo consentimiento escrito de la Compañía.

3.17. Conflictos de Interés / No Reclutamiento. Los distribuidores de 4Life tienen la libertad de participar en



TOGETHER, BUILDING PEOPLE®

network marketing business ventures or marketing opportunities. However, during the term of this Agreement, distributors may not recruit other 4Life distributors or customers for any other multilevel or network marketing business. During the term of this Agreement and, for a period of six (6) months following the cancellation thereof, a distributor or former distributor may not recruit any 4Life distributor or customer for another multilevel marketing business. Because network marketing is often conducted over the telephone and via the Internet through networks of individuals spanning the U.S. and internationally, any narrow geographic limitation on the scope of this non-solicitation policy would render it ineffective. Therefore, this policy shall apply to all countries where 4Life is officially open for business. The term "recruit" means actual or attempted solicitation, enrollment, encouragement or effort to influence in any way, either directly or through a third party, a 4Life distributor or customer to enroll or participate in another multilevel marketing, network marketing or direct sales opportunity. If the distributor or former distributor directly or indirectly responds to an inquiry by a 4Life distributor, this also constitutes recruiting.

Distributors may not display 4Life products or services with any other non4Life products or services. If operating from a physical retail location, 4Life products or services must be displayed separately from non-4Life products or services. Distributors may not offer the 4Life opportunity, products or services to prospective or existing customers or distributors in conjunction with any non4Life program, opportunity, product or service. Distributors may not offer any non-4Life opportunity, products or services at any 4Life-related meeting, seminar or convention.

3.18. Downline Activity Reports. All Downline Activity Reports and the information contained therein are confidential and constitute proprietary business trade secrets information belonging to 4Life. Downline Activity Reports are provided to distributors in strictest confidence and are made available to distributors for the sole purpose of assisting distributors in working with their respective Marketing Organizations in the development of their 4Life business. Distributors should use their Downline Activity Reports to manage, motivate and train their Downline distributors. The distributor and 4Life agree that, but for

otros mercados de red o negocios de multinivel u oportunidades de mercadeo. Sin embargo, durante la duración de este Contrato, los distribuidores no podrán reclutar a otros distribuidores ni clientes de 4Life para participar en ningún otro negocio multinivel. Durante la duración de este Contrato y por un periodo de seis (6) meses a partir de la fecha de cancelación del mismo, un distribuidor o ex distribuidor no podrá reclutar a ningún distribuidor ni cliente de 4Life para otro negocio de mercadeo de red. Debido a que el mercadeo de red a menudo se conduce por teléfono y a través de la Internet en redes de individuos que abarcan desde los EE.UU. hasta los mercados internacionales, cualquier pequeña limitación geográfica dentro de lo que abarque esta norma de no solicitar quedaría sin efecto. De modo que esta norma se aplicará a todos los países en los que 4Life está oficialmente abierta para hacer negocios. El término "reclutar" significa el hecho en sí o la intención de reclutar, inscribir, alentar o cualquier esfuerzo por ejercer una influencia de cualquier manera, ya sea directamente o a través de terceros, un distribuidor de 4Life o cliente que inscriba o participe en otro mercado de multinivel, mercadeo de red u oportunidades de ventas directas. Si el distribuidor o el ex distribuidor responden directa o indirectamente a una pregunta por parte de un distribuidor de 4Life, esto también constituye reclutamiento.

Los distribuidores no podrán exhibir los productos de 4Life ni sus servicios junto a ningún otro producto o servicio que no sea de 4Life. Si opera desde un lugar físico para el menudeo, los productos y servicios de 4Life deberán exhibirse separados de los que no sean de 4Life. Los distribuidores no pueden ofrecer la oportunidad de 4Life, sus productos o servicios a posibles clientes o a los clientes existentes en conjunción con ningún otro programa, oportunidad, producto o servicio que no sea de 4Life. Los distribuidores no podrán ofrecer una oportunidad que no sea la de 4Life, sus productos y servicios en ninguna reunión, seminario ni convención que se relacione con 4Life.

3.18. Informes sobre la Actividad de la Línea Descendente. Todos los informes sobre la actividad de la línea descendiente y la información contenida en los mismos son confidenciales y constituyen secretos exclusivos del negocio y la información pertenece a 4Life. Los informes sobre la actividad de la línea descendiente se les proporcionan a los distribuidores en la más absoluta confidencia y están a disposición de los distribuidores con el solo fin de asistirles a los distribuidores a trabajar con sus respectivas organizaciones en el desarrollo de su negocio de 4Life. Los distribuidores deberían utilizar sus

EXHIBIT D



POLICIES AND PROCEDURES

TERMS AND CONDITIONS

TABLE OF CONTENTS

Section 1 - Introduction

- 1.1 Policies and Compensation Plan Incorporated into IBC Agreements
- 1.2 Purpose of Policies
- 1.3 Changes to the Agreements
- 1.4 Delays
- 1.5 Policies and Provisions Severable
- 1.6 Waiver

Section 2 – Becoming an IBC

- 2.1 Requirements to Become an IBC
- 2.2 No Product Purchase Required
- 2.3 New IBC Registration by Telephone, or Online Submission
- 2.4 IBC Benefits

Section 3 – Operating a SENUVO Business

- 3.1 No Modification to SENUVO Programs
- 3.2 Advertising
- 3.3 Bonus Buying Prohibited
- 3.4 Business Entities
- 3.5 Changes to Ownership of a SENUVO Business
- 3.6 Unauthorized Claims and Action
- 3.7 Commercial Retail Outlets
- 3.8 Trade Shows, Expositions and Other Sales Forums
- 3.9 Conflicts of Interest
- 3.10 Cross-Enrolling
- 3.11 Errors or Questions
- 3.12 Excess Inventory Purchases Prohibited
- 3.13 Governmental Approval or Endorsement

3.5.3. Cancellation and Re-application. An IBC may legitimately change organizations by voluntarily canceling his or her SENUVO Business by submitting SENUVO Cancellation and Termination Form and thereafter remain inactive (i.e., no purchase of SENUVO products for resale, no enrolling, no participation in any other form of SENUVO Business activity, or operation of any other SENUVO business) for six full calendar months. Following the six-month period of inactivity, the former IBC may reapply under a new Direct up line. Any exception to this provision must be in writing and signed by an authorized representative of Senuvo's Legal Department.

3.6. Unauthorized Claims and Actions.

3.6.1. Indemnification. An IBC is fully responsible for all of his or her verbal and written statements made regarding SENUVO products, services, and the Compensation Plan which are not expressly contained in official SENUVO materials. IBCs agree to indemnify SENUVO and SENUVO's directors, officers, employees, and agents, and hold them harmless from any and all liability including judgments, civil penalties, refunds, attorney fees, court cost, or lost business incurred by SENUVO as a result of the IBC's unauthorized representations or actions. This provision shall survive the termination of the IBC Agreement.

3.6.2. Product Claims. No claims (which include personal testimonials) as to therapeutic, curative or beneficial properties of any products offered by SENUVO may be made except those contained in official SENUVO literature. In particular, no IBC may make any claim that SENUVO products are useful in the cure, treatment, diagnosis, mitigation or prevention of any diseases. Not only do such claims violate SENUVO policies, but they potentially violate federal and local laws and regulations, including the Federal Food, Drug and Cosmetic Act and Federal Trade Commission Act.

3.6.3. Income Claims. In their enthusiasm to enroll prospective IBCs, some IBCs are occasionally tempted to make income claims or earnings representations to demonstrate the inherent power of network marketing. This is counterproductive because new IBCs may become disappointed very quickly if their results are not as extensive or as rapid as the results others have achieved. Moreover, the Federal Trade Commission and several states and provinces have laws or regulations that regulate or even prohibit certain types of income claims and testimonials made by persons engaged in network marketing. Therefore, IBCs may not make income projections, income claims, representations, or disclose his or her SENUVO income or the income of any other SENUVO IBC (including the showing of checks, copies of checks, bank statements, or tax records). Senuvo may, from time to time, and where permitted by law, publish average income figures derived from company records.

3.7. Commercial Retail Outlets. SENUVO strongly encourages the retailing and selling of its products and services through person to person contact. In an effort to reinforce this method

of marketing and to help provide a standard of fairness for its IBC base, IBCs are encouraged not to display or sell SENUVO products, services, or literature in any retail or service establishment.

3.8. Trade Shows, Expositions and Other Sales Forums. IBCs may display and/or sell SENUVO products at trade shows, salons, doctor's offices and professional expositions. The foregoing notwithstanding, IBC may not display and/or sell products at swap meets, garage sales, flea markets or farmer's markets as these events are not conducive to the professional image SENUVO wishes to portray.

3.9. Conflict of Interest

3.9.1. Non-solicitation. SENUVO IBCs are free to participate in other multilevel or network marketing business ventures or marketing opportunities (collectively "network marketing"). However, during the term of this Agreement, and for one year thereafter, regardless of the reason for termination or cancellation, IBCs may not recruit other SENUVO IBCs or Customers for any other network marketing business. The term "recruit" means actual or attempted solicitation, enrollment, encouragement, or effort to influence in any other way, either directly or through a third party, another SENUVO IBC or Customer to enroll or participate in another multilevel marketing, network marketing or direct sales opportunity. This conduct constitutes recruiting even if the IBC's actions are in response to an inquiry made by another IBC or Customer. IBCs may not offer the SENUVO opportunity, products or services to prospective or existing Customers or IBCs in conjunction with any non-SENUVO approved program, opportunity, product or service. IBCs may not offer any non-SENUVO approved opportunity, product or services at any SENUVO-related meeting, seminar, convention, or immediately following such event.

3.10. Cross Line Enrolling. Actual or attempted cross enrolling is strictly prohibited. "Cross enrolling" is defined as the enrollment of an individual who or entity that already has a current IBC or Customer Agreement on file with SENUVO, or who has had such an agreement or other relationship with SENUVO within the preceding six calendar months, with a different Enroller. The use of a spouse's or relative's name, trade names, DBA's, assumed names, corporations, partnerships, trusts, federal ID numbers or fictitious ID numbers to circumvent this policy is prohibited. IBCs shall not demean, discredit or defame other SENUVO IBCs or Customers in an attempt to entice another IBC or Customer to become part of the first IBC's marketing organization. This policy shall not prohibit the transfer of a SENUVO Business in accordance with Section 3.26.

3.11. Errors or Questions. If an IBC has questions about or believes any errors have been made regarding commissions, bonuses, down line Activity Reports, or charges, the IBC must notify SENUVO's IBC Relations Department in writing within 30 days of the date of the purported error or incident in question. SENUVO will consider any issues waived and will not